

Handwritten signature

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

IMPERIAL EASTMAN CORPORATION

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -1969

Decision No. CU -894

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by IMPERIAL EASTMAN CORPORATION in the amount of \$15,548.96 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

Claimant corporation is the survivor of a merger, on September 16, 1960, between Imperial Brass Manufacturing Company, an Illinois corporation and Eastman Manufacturing Company, a Wisconsin corporation. An officer of claimant corporation has certified that at all times between the incorporation of the Imperial Brass Manufacturing Company on January 7, 1905 and September 16, 1960 100% of the outstanding capital stock of Imperial Brass Manufacturing Company had been owned by United States nationals. Further, said officer has certified that since September 16, 1960 and April 24, 1967, the date of presentation of this claim, 99.135% of the 1,073,476 stockholders of the claimant corporation, IMPERIAL EASTMAN CORPORATION, were residents of the United States and presumed to be United States nationals, and .865% of the stockholders were residents of foreign countries and presumed to be citizens of those countries. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices, credit memoranda, and bills of lading reflecting transactions with the various Cuban entities listed below, with adjustments made for freight charges and credits:

<u>Consignee</u>	<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
Senior Trading Company	11803	January 13, 1958	\$ 84.01
Importaciones y Ventas	credit	March 17, 1958	(3.96)
Importadora Rabonet	39000	May 2, 1958	27.05
Motores Diamond T de Cuba	-----	May 4, 1959	29.94
Salvador Valdez Velez	69394	May 6, 1959	23.88
Maquinarias y Equipos	-----	August 4, 1959	58.47
	10783	September 25, 1959	27.10
Importadora de Piezas La Federal, S. A.	credit	February 16, 1959	(8.58)
	credit	March 9, 1959	(2.07)
	credit	July 17, 1959	(10.96)
	18494	October 26, 1959	554.53
	freight	July 22, 1960	77.17
Gonzalez y Sanchez Ferreteria La Antilla	21601	November 10, 1959	1,543.17
Partes y Accesorios Duay, S. A.	24174	November 19, 1959	483.29
	freight	December 21, 1959	89.33
Universal Motor Service, S. A.	28070	December 8, 1959	515.95
A. Godoy Hijos	credit	July 13, 1960	(27.66)
	credit	July 13, 1960	(81.40)
	credit	August 19, 1960	(41.16)
Auto Piezas Parmo	freight	July 22, 1960	59.30
Almacenes Refricentro, S. A.	80720	September 1, 1960	2,478.55
	freight	September 25, 1960	141.89
Compania de Accesorios de Refrigeracion, S. A.	freight	September 19, 1960	5.00
		TOTAL	\$6,022.84
		(less credits)	

Claimant states that it has not received the funds.

The record also contains copies of other invoices of claimant reflecting sales to the Cuban consignees listed below, together with copies of bank correspondence from various Cuban banks to claimant's bank, the Continental Illinois National Bank and Trust Company of Chicago, reporting that the drafts had been paid by the consignees but that the banks were awaiting dollar reimbursement releases from the Exchange Board, a Cuban Government agency:

<u>Consignee</u>	<u>Bank</u>	<u>Amount</u>	<u>Date Paid or Acknowledged</u>
Agencia de Tractores y Equipos, S. A.	Royal Bank of Canada	\$ 738.86	March 8, 1960
Compania Rogelio Vocero, S. A.	Banco Nunez	1,615.85	September 28, 1960
Almacenes Refricentro, S. A.	Banco Pujol	1,912.96	February 2, 1960
Riveron y Compania S en C	Trust Company of Cuba	381.82	August 25, 1960
Importadora de Piezas La Federal, S. A.	Royal Bank of Canada	483.97	August 24, 1960
Compania de Accesorios de Refrigeracion, S. A.	First National City Bank N.Y.	3,153.63	March 9, 1960
Motores Diamond T de Cuba, S. A.	Banco Gelats	777.37	October 1, 1960
Champion Oil Company	Banco Nunez	461.66	October 26, 1960

Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by

the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 224.88
November 28, 1959	572.62
December 15, 1959	515.95
January 5, 1960	554.53
January 18, 1960	1,543.17
February 3, 1960	1,912.96
March 9, 1960	738.86
March 10, 1960	3,153.63
August 9, 1960	77.17
August 16, 1960	59.30
August 25, 1960	483.97
August 26, 1960	381.82
September 20, 1960	5.00
September 29, 1960	1,615.85
October 2, 1960	777.37
October 27, 1960	461.66
November 13, 1960	2,470.22

being the date of Cuban Law 568 as to the amount of \$224.88, the dates payment became due as to the unpaid accounts, and the dates following the dates of acknowledgement of payment by the Cuban banks as to the paid accounts.

The Commission has decided that in the certification of losses on Claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of Settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that IMPERIAL EASTMAN CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifteen Thousand Five Hundred Forty-Eight Dollars and Ninety-Six Cents (\$15,548.96) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.
and entered as the Proposed
Decision of the Commission

JAN 10 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

THIS IS A TRUE AND CORRECT COPY OF THE DECISION
OF THE COMMISSION WHICH WAS ENTERED ON THE FINAL
RECORD ON _____

John H. ...

John H. ...

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-1969

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.